

**CITY OF CORAL GABLES, FLORIDA**

**RESOLUTION NO. 2019-250**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA, STAYING ENFORCEMENT OF CHAPTER 34, ARTICLES IX AND X OF THE CITY CODE IN RESPONSE TO THE RULING BY THE THIRD DISTRICT COURT OF APPEAL IN FLORIDA RETAIL FEDERATION, INC. ET AL. V. THE CITY OF CORAL GABLES, FLORIDA, CONTINUING ENFORCEMENT OF SECTIONS 2-730, 62-262, AND 62-263 OF THE CITY CODE, AND ENCOURAGING BUSINESSES TO CONTINUE COMPLYING WITH CHAPTER 34, ARTICLES IX AND X, BY NOT RESUMING THE USE OF PRODUCTS MADE WITH EXPANDED POLYSTYRENE OR SINGLE-USE PLASTIC BAGS.

**WHEREAS**, acknowledging the significant harmful effects of expanded polystyrene on the environment and finding the regulation of expanded polystyrene necessary for the preservation of our environment and the public health, safety, and welfare of City of Coral Gables residents and visitors, in late 2015, the City began the process of regulating this product; and

**WHEREAS**, on December 8, 2015, the City Commission adopted, on first reading, Ordinance 2016-08; and

**WHEREAS**, the City engaged the business community and delayed second reading of the ordinance in order to allow time for input from retailers, the Coral Gables Chamber of Commerce, and the Business Improvement District; and

**WHEREAS**, on February 9, 2016, the City Commission adopted Ordinance 2016-08, on second reading, providing for an immediate effective date but stipulating that enforcement would not begin until August 9, 2016 or 180 days after second reading, in order to allow for an educational campaign and a grace period to ensure a smooth transition; and

**WHEREAS**, Ordinance 2016-08 prohibits: (1) city vendors/contractors from, selling or using expanded polystyrene within the City or in completing their duties under contract with the City, (2) special event permittees from using expanded polystyrene articles during events, and (3) generally prohibits the sale or use of expanded polystyrene by businesses in the City; and

**WHEREAS**, on July 18, 2016, the Florida Retail Federation, Inc. and Super Progreso, Inc. ("Plaintiffs") filed a Complaint against the City of Coral Gables for declaratory judgment and

injunctive relief and seeking a declaration that Ordinance 2016-08 was invalid as preempted by Section 500.90, F.S.; and

**WHEREAS**, on February 27, 2017, Eleventh Judicial Circuit Judge Jorge E. Cueto granted the City's Motion for Summary Judgment finding (1) Section 500.90, F.S. (preempting the regulation of expanded polystyrene) violates the Miami-Dade Home Rule Amendment, is an impermissible special law aimed at the City of Coral Gables, violates the doctrine of non-delegation of powers, and is arbitrary and capricious, and (2) Sections 403.708(9) and 403.7033, F.S. (preempting the regulation of single-use plastic bags) unconstitutionally vague; and

**WHEREAS**, as a result of the Court's ruling finding the preemption of single-use plastic bags unconstitutional, on May 9, 2017, the City Commission, again finding that the regulation is necessary for the preservation of our environment and the public health, safety, and welfare of City residents, visitors, and future generations, adopted Ordinance 2017-13 providing an immediate effective date, but stipulating that enforcement would not begin for one year after second reading, in order to allow for an educational campaign and a grace period to ensure a smooth transition; and

**WHEREAS**, Ordinance 2017-13 prohibits (1) special event permittees from using single-use plastic bags during events, and (2) generally prohibits the use of single-use plastic bags by businesses in the City; and

**WHEREAS**, on March 10, 2017, Plaintiffs appealed the Circuit Court's order, on March 13, 2017, the State of Florida joined Plaintiffs in the appeal, and in December 2017, oral argument was held before a panel of the Third District Court of Appeals; and

**WHEREAS**, on August 14, 2019, the Third District Court of Appeal found that the trial court erred in concluding that the three statutes are unconstitutional and reversed the lower court's ruling; and

**WHEREAS**, the City remains wholly committed to protecting the environment and Home Rule, is currently evaluating next steps both judicially and legislatively, and remains optimistic that the use expanded polystyrene and single-use plastic bags will not resume; and

**WHEREAS**, in accordance with the August 14<sup>th</sup> ruling, the City Commission is staying enforcement of Chapter 34, Articles IX and X of the City Code, and continuing enforcement of Sections 2-730 (use of expanded polystyrene by City contractors/vendors), 62-262 (use of expanded polystyrene by special event permittees), and 62-263 (use of single-use plastic bags by special event permittees); and

**WHEREAS**, during the stay, the City Commission urges businesses in the City, in the best interest of the environment, to continuing complying with Chapter 34, Articles IX and X by not

using products made with expanded polystyrene and not resuming the use of single-use plastic bags; and

**WHEREAS**, during the August 27, 2019 City Commission meeting, the City Commission directed the City Attorney to proceed with appealing the ruling by the Third District Court of Appeal through the Florida Supreme Court;

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:**

**SECTION 1.** The foregoing “Whereas” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

**SECTION 2.** That the City Commission hereby directs a stay in the enforcement of Chapter 34, Articles IX and X of the City Code, and specifically directs continued enforcement of Sections 2-730, 62-262, and 62-263.

**SECTION 3.** That the City Commission hereby urges business located within the City to continue protecting the environment by not using single-use plastic bags or products made with expanded polystyrene. The City Commission further officially requests that the Coral Gables Chamber of Commerce and Business Improvement District assist in this effort by encouraging businesses, through official green initiative programs or otherwise, to continue refraining from the use of these harmless products.

**SECTION 4.** That this Resolution shall become effective upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS TWENTY-SEVENTH DAY OF AUGUST, A.D., 2019.

(Moved: Lago / Seconded: Mena)

(Yeas: Fors, Jr., Keon, Lago, Mena, Valdes-Fauli)

(Unanimous: 5-0 Vote)


(Agenda Item: J-2)

APPROVED:



RAÚL VALDÉS-FAULI  
MAYOR

ATTEST:



BILLY Y. URQUIA  
CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:



MIRIAM SOLER RAMOS  
CITY ATTORNEY